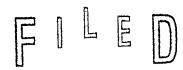
# DEPARTMENT OF REAL ESTATE P. O. Box 187000 Sacramento, CA 95818-7000

Telephone: (916) 227-0789



MAY 1 2 2010

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

### DEPARTMENT OF REAL ESTATE

ROSEVILLE FEDERAL MORTGAGE, PAUL DIETRICH, DAVID SMITLEY, and BARBARA SIMON	ORDER TO I	5390 SAC <u>DESIST AND REFRAIN</u> ode Section 10086)
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The Commissioner (hereinafter "Commissioner") of the California Department of Real Estate (hereinafter "Department") caused an investigation to be made of the activities of ROSEVILLE FEDERAL MORTGAGE (hereinafter "RFM"), PAUL DIETRICH (hereinafter "DIETRICH"), DAVID SMITLEY (hereinafter "SMITLEY"), and BARBARA SIMON (hereinafter "SIMON"). Based on that investigation, the Commissioner has determined that RFM, DIETRICH, SMITLEY, and SIMON have engaged in, is engaging in, or is attempting to engage in, acts or practices constituting violations of the California Business and Professions Code (hereinafter "the Code") and/or Title 10, Chapter 6, California Code of Regulations (hereinafter "the Regulations"), including the business of, acting in the capacity of, and/or advertising or assuming to act as, a real estate broker in the State of California within the meaning of Sections 10131(d) (performing services for borrowers and/or lenders in connection with loans secured by real property) and 10131.2 (real estate broker license required to charge

and collect an advance fee) of the Code. Furthermore, based on the investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

Whenever acts referred to below are attributed to RFM, those acts are alleged to have been done by DIETRICH, SMITLEY, and/or SIMON, acting by themselves, or by and/or through one or more agents, associates, affiliates, and/or co-conspirators, and using the name "Roseville Federal Mortgage", or other names or fictitious names unknown at this time.

## **FINDINGS OF FACT**

- 1. At no time herein mentioned has RFM, DIETRICH, SMITLEY, and/or SIMON been licensed by the Department in any capacity.
- 2. During the period of time set forth below, RFM, DIETRICH, SMITLEY, and/or SIMON, while employed by or acting on behalf of one or more of the related entities, solicited borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charge, demand or collect an advance fee for any of the services offered.
- 3. On approximately December 28, 2009, RFM acting through SIMON solicited Peggy Ellen LeClert (hereinafter "LeClert") in order to provide loan modification/refinance through a program called "Equity Relief Refinance Program" to LeClert in connection with loans secured by real property located at 160 E. Alder Street and 8427 Melrose Drive, Stockton, California. In furtherance of RFM's plan and scheme to provide loan modification services to LeClert, SIMON requested an advance fee of \$1,595 per loan from LeClert.
- 4. On approximately February 23, 2010, RFM, acting through DIETRICH, via facsimile correspondence and telephone, solicited an undercover Deputy Real Estate Commissioner to negotiate a loan modification/refinance through a program called "Equity

5. On approximately March 12, 2010, RFM acting through SMITLEY solicited Gary Rone (hereinafter "Rone") in order to provide loan modification/refinance through a program called "Equity Relief Refinance Program" to Rone in connection with a loan secured by real property located at 3725 Gatesville Avenue, Modesto, California. In furtherance of RFM's plan and scheme to provide loan modification/refinance services to Rone, SMITLEY requested an advance fee of \$1,595 from Rone.

### **CONCLUSIONS OF LAW**

- 6. Based on the findings of fact contained in paragraphs 1 through 5, RFM, DIETRICH, SMITLEY, and/or SIMON, solicited one or more borrowers to perform services for those borrowers and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property located within the State of California, and charged, demanded or collected advance fees for the services to be provided, which acts require a real estate broker license under Sections 10131(d) (real estate license required for enumerated acts) and 10131.2 (real estate broker license required to charge or collect an advance fee) of the Code..
- 7. RFM, DIETRICH, SMITLEY, and/or SIMON, used a form of advance fee agreement which had not been provided to the Department for its prior review and consideration, in violation of Section 10085 of the Code (prior submission of advance fee materials required) and Section 2970 (details for prior submission of advance fee materials) of the Regulations.

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## DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, RFM,
DIETRICH, SMITLEY, and SIMON, whether doing business under your own name, or any other
name or fictitious name, ARE HEREBY ORDERED to:

- 1. Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, for any of the services you offer to others, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that you are properly licensed by the Department as a real estate broker, and that RFM, DIETRICH, SMITLEY, and SIMON:
- (A) Have an advance fee agreement which has been submitted to the Department and which is in compliance with Sections 2970 and 2972 of the Regulations;
- (B) Have placed all previously collected advance fees into a trust account for that purpose and are in compliance with Section 10146 of the Code;
- (C) Have provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations; and
- (D) Are in compliance with California law, as amended effective as of October 11, 2009, with respect to loan modification and/or forbearance services. Under the amended law, you can only collect advance fees for loan modification or other mortgage loan forbearance services related to commercial loans and loans for residential properties containing five or more dwelling units.

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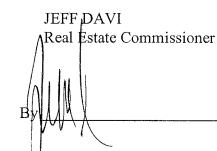
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2. Immediately desist and refrain from demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and under any conditions, with respect to the performance of loan modification or any other form of mortgage loan forbearance services in connection with loans on residential property containing four or fewer dwelling units.

DATED: 5-4-2016



Notice: Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars (\$20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars (\$60,000)."

cc: ROSEVILLE FEDERAL MORTGAGE ATTENTION: PAUL ANTHONY DOBYNES 1410 ROCKY RIDGE DRIVE #160 ROSEVILLE, CA 95661

> PAUL DIETRICH 1410 ROCKY RIDGE DRIVE #160 ROSEVILLE, CA 95661

> DAVID SMITLEY 1410 ROCKY RIDGE DRIVE #160 ROSEVILLE, CA 95661

> BARBARA SIMON 1410 ROCKY RIDGE DRIVE #160 ROSEVILLE, CA 95661

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